MOHAMED AZWAN HJ ALI

v.

SISTEM TELEVISYEN MALAYSIA BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUMMONS NO: S2(S3)-23-33-1998]
3 JULY 2000

TORT: *Defamation - Libel - Words uttered in local television programme - Whether defamatory of plaintiff artiste - Whether uttered in jest - Defence of fair comment - Whether plaintiff invited public comment*

The plaintiff was a well-known local artiste involved in the entertainment industry. The plaintiff brought this action for libel against the defendants for defamatory words uttered by the 4th defendant in a local programme called "Melodi" aired by the 1st defendant on its commercial television channel. By the said defamatory words, the plaintiff had allegedly cried when a local actress, one Ziana Zain had got married. The plaintiff claimed that that had caused him embarrassment and humiliation in the eyes of the public.

The defendants raised the defence of fair comment and submitted an article which showed that the plaintiff was prepared to offer a sum of RM60,000 to marry the said local actress.

Held:

[1] The plaintiff was the author of his own misfortune. The plaintiff read too much into a simple light entertainment. The basis for the light entertainment was the existence of the gossip and rumour (not denied by the plaintiff and his witnesses) that there was a romantic liaison between the plaintiff and Ziana Zain.

[2] Public personalities must accept the "buffets and blows" that come with fame. The critical comments that they face must be accepted with equal composure as the accolades that they love so much to hear.

[3] Words, which on the face of them, are obviously defamatory may not be so because of the circumstances under which they are published. They may be spoken in jest, and so understood by any one who hears them [*Willows v. Williams*]. When spoken in obvious jest, the person uttering them is not liable [*Glass v. Perl*].

[4] Since the programme "Melodi" was in itself a light entertainment programme as admitted by the plaintiff's own witness, the alleged defamatory words uttered by the 4th defendant were words spoken in jest. It followed therefore, that the said words were not defamatory of the plaintiff.

[5] The plaintiff's name and credibility as an artiste were not tarnished nor tainted by the alleged defamatory words. It therefore did not behove the plaintiff to contend that he was shunned or avoided by the public or was exposed to hatred, ridicule or contempt since the plaintiff was still accepted by the viewers and the public as an accredited artiste.

[6] The plaintiff did not deny the article that was admitted into the Common Agreed Bundle of Documents. That clearly put paid to the plaintiff's cry of innocence and denial of any amorous feelings towards Ziana Zain. Thus, the defence of fair comment was well and truly taken.

[7] The plaintiff clearly invited public comment by his public announcement of his intention to propose marriage to Ziana Zain. Any matter brought before the public so as to invite public criticism may be commented upon.

[Case dismissed.]

Case(s) referred to:
Abdul Karim Ayob v. Kumpulan Karangkraf Sdn Bhd & Ors [2000] 5 CLJ 223 ***(refd)***
Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 ***(refd)***
Glass v. Perl [1929] TPD 264 ***(refd)***
Payne v. Sheffield [1882] 2 EDC 166 ***(refd)***
Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors [1999] 8 CLJ 499 ***(refd)***
Warren v. Green [1958] DLR 255 ***(refd)***
Willows v. Williams [1951] 2 WWR (NS) 657 ***(refd)***

For the plaintiff - John Clark Sumugod (Low Beng Choo & CH Low with him); M/s Sidek Teoh Wong & Dennis
For the 1st, 2nd and 3rd defendants - Looi Pek Hong; M/s PH Looi & Co
For the 4th defendant - Hermes Ibrahim (Iszam Kamal Ismail & Harriri Md Noor with him); M/s Iszam Kamal & Harriri

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

Facts

The plaintiff is a well-known television personality, television compere, composer, producer, actor, singer and script writer and is known throughout Malaysia,

Singapore and Brunei and has been involved in the entertainment industry for the last 11 years. He had previously won the prestigious award for the most popular male personality award in "Anugerah TV3 1994". He is also a businessman and has a company called Azwan Ali Production Sdn Bhd where he is the managing director. He had worked for the 1st defendant from 1988 to 1996 and was involved in many of the 1st defendant's programmes such as "Muzik Muzik", "Lontong", "Sambal", "Skrin" and "Juara Lagu 96" and was also a former host of the programme "Melodi". Whilst in the employment of the 1st defendant, he had also worked as a deputy producer for the 2nd defendant. The plaintiff is presently with Astro and had produced the programme called "Chit Chat Azwan" which was voted as the 3rd Best Asian Programme in the Asian TV Awards 1999.

Case For The Plaintiff

The plaintiff brought this action for libel against the defendants as the broadcaster, owner, the producer and maker of the defamatory statements respectively in the programme called "Melodi" aired by the 1st defendant on its commercial television channel called "TV3" on 10 and 17 May 1998. The plaintiff claims that the 4th defendant had, in a segment of the programme "Melodi" aired by the 1st defendant on 10 May 1998, uttered the following defamatory words in respect of the plaintiff:

Ogy (4th defendant):	Eh … Ah Pek! Yang kau menangis-nangis ni kenapa?
Ah Pek:	(Meruang) ("Hysterical") Ai ya … Gua punya giplen ("girlfriend") sudah kawin …
Ogy (4th defendant):	Ooo … kau ni nak jadi macam Azwan Ali-lah menangis sebab Ziana Zain kawin!"

The plaintiff claims that the defendants' attempted apology to him in the programme "Melodi" aired by TV3 on 17 May 1998 was also defamatory of the plaintiff and was made without his prior notice or consent, was insincere and had further ridiculed and humiliated him. The plaintiff claims that the programme "Melodi" aired by TV3 on 17 May 1998 was performed by the 4th defendant and a character known as Ah Pek in a mourning mood, wearing dark coloured clothings and after saying the words "mintak maaf", the 4th defendant and Ah Pek were seen by viewers, jumping with joy. The plaintiff also claims that the programme "Melodi" aired by TV3 on 17 May 1998 when the 4th defendant said the following words in a joking manner, further ridiculed and humiliated him:

Ha ... Michael … Jangan saman I.

The plaintiff claims that the words "mintak maaf" were uttered jokingly throughout the said programme and repeated at least seven times without any further explanation or showing any relevance to the defendants' intention of making a public apology to the plaintiff. It was the plaintiff's case that the said programme viewed as a whole showed the insincerity of the defendants and their intention to further ridicule and belittle him.

The plaintiff further contended that the circumstances of the apology and the words "mintak maaf" repeated several times and "jangan saman I", portrayed the plaintiff as being highly sensitive, unreasonable and made the plaintiff a laughing stock before the viewers. The plaintiff also claimed that after he left the employment of the 1st and 2nd defendants, the 1st and 2nd defendants' management then became vindictive and vengeful towards him.

Findings Of The Court

The plaintiff testified that he was never romantically involved with an actress called Ziana Zain and that they were mere friends and fellow artistes. The plaintiff also testified that he had never cried because Ziana Zain was married and it is also in evidence that the 4th defendant had admitted having no knowledge as to whether the plaintiff had cried or not, upon Ziana Zain getting married. The plaintiff called two witnesses on his behalf, one of whom was his own sister, Norlia bt. Haji Ali. It was pointed out by the defence that this witness was seated in court throughout the plaintiff's evidence. This witness however admitted under cross-examination to having heard gossip and rumours between the plaintiff and Ziana Zain. Under strenuous cross-examination she admitted knowing that her brother liked Ziana Zain but not to the extent of being in love with her. She also agreed that the programme "Melodi" was a light entertainment programme. The next witness for the plaintiff was Hamidon bin Md. Said. He too had been sitting in court throughout the plaintiff's evidence. He testified that he is a long time close friend of the plaintiff. This close friend of the plaintiff testified that the segment of the programme "Melodi" that indicated that the plaintiff had cried over the marriage of Ziana Zain to another, imputed that the plaintiff coverts and harbours feelings towards a married woman and thus it depicted the plaintiff as being immoral in the eyes of his religion. Before I proceed further I must point out that the issue of religion being a sensitive one, it is totally inappropriate for the plaintiff to bring his religion into this case to support his stand. Even assuming the plaintiff had indeed cried when Ziana Zain married another, it can be taken as the natural outpouring of someone shedding tears to appease his unrequited loved. How then can it be said that the plaintiff was coveting another's wife. The plaintiff is entitled to shut his heart and mind off from thinking of his unrequited love. I am firmly of the view that it is time parties do not drag their respective religions into conflict to suit their own ends and the success of their case, as

if to say "it has hurt not me, but my religion". Religion is as ancient as existence itself. It is totally improper to give an interpretation that suits one's case and to contend that one's religion supports that interpretation.

To my mind this is a simple case. The 4th defendant is a talented artiste, presenter, entertainer, director, producer, television and film actress, television personality, and singer and is well known throughout Malaysia. From the age of 11 until 37 years old, she has won many prestigious local and international awards *inter alia* the Most Talented Young Actress Award at the South East Asia Film Festival, "Anugerah Bintang Harapan" in Festival Film Malaysia, Best Actress Award at Festival Film Malaysia in 1986 and 1987, "Pelakon Film Wanita Popular 1986", and has been voted by the public as "Artis Serba Boleh" in 1999 by Majalah Media Hiburan, and being awarded the "Anugerah Skrin Bintang Popular" in 1998 as being the Most Popular and Sensational Presenter. The 4th defendant has more than ten years' experience as a presenter and is well known for her creativity and ad libbing. This is acknowledged and confirmed by the plaintiff, the 1st defendant, 2nd defendant and the 3rd defendant. As a person the 4th defendant is known to be a jovial person who likes to make jokes in any light entertainment shows that she conducts so as to liven up the said programme.

The 1st and 2nd defendants have employed the 4th defendant since 1992 as a presenter to host a local light entertainment programme called "Melodi". On the instructions of the 1st, 2nd and 3rd defendants, the programme "Melodi" was shown live on television for the first time on Sunday, 10 May 1998 and then on 17 May 1998 in which the two episodes containing the segments which are allegedly defamatory of the plaintiff, were reported to have been said.

I had the benefit of viewing the programme "Melodi" aired on 10 May 1998, in court. The entire script as recorded verbatim is reproduced herewith:

Ogy (4th defendant):	Ni kenapa menangis?
Ah Pek:	(menangis) Gua punya giplen (girlfriend) bukan yang ini dua orang (referred to handing pictures) itu bini … ini giplen (girlfriend) sudah kawin ini hari!
Ogy (4th defendant):	3 bini pun ada girlfriend lagi ka? Siapa … siapa? Cerita?!
Ah Pek:	Ini ha! (shows a card)
Ogy (4th defendant):	Eh Ah Pek, biar betul! Ini Siti Ruziana binti Zain! Ehh, Ah Pek dah kena "speedo" ini Ah Pek! Ini kad bohong ni Ah Pek. Dua puluh Ringgit orang buat sekarang!

Ah Pek: Klon ke? Klon ke? Gua kena tipu lah?!

Ogy (4th defendant): Kenapa ni menangis-nangis, Ziana Zain yang kahwin?

… Kau ni pun jadi macam Azwan Ali-lah … Ziana Zain kawin kau orang menangis! Kenapa aku kawin kau orang tak nangis?!"

In his amended pleadings the plaintiff claims that the word "menangis" gives the impression to the public that the plaintiff was "hysterical" when Ziana Zain married. It is obvious therefore that it was the use of the word "menangis" that is alleged to have caused the plaintiff embarrassment and humiliation. To the ordinary man in the street the word "menangis" means "crying"; that is the natural and ordinary meaning that ought to be given to "menangis" and as I said earlier it is perfectly normal and natural for anyone, be he a male or a female, to shed tears upon losing his/her loved one to another. In *Abdul Karim bin Ayob v. Kumpulan Karangkraf Sdn Bhd & Ors* [2000] 5 CLJ 223 I said at p. 227 as follows:

> … To my mind, the meaning that ought to be attributed to the word 'miang' is not what a professor of languages ensconced in his air-conditioned room, thinks it means, but what the ordinary man in the street would think it means.

The plaintiff's contention that "menangis" means that he was "hysterical" ("melalak") is totally unsupported by any evidence. He has failed to prove that the word "menangis" may also have a secondary meaning or any extended meaning which no doubt would depend upon knowledge of special or extrinsic facts. This secondary meaning, known as an innuendo, has not been proven. The evidence of the plaintiff's two witnesses on this score must be literally taken with the proverbial pinch of salt. Both are partial witnesses and their demeanour in court totally belied their impartiality. The confrontational manner in which they testified under cross-examination clearly showed that their presence in court throughout the entire evidence of the plaintiff was sufficient to tailor their evidence to suit the plaintiff's testimony.

At this juncture it is necessary to point out that the plaintiff had amended the pleadings and substituted the word "melalak" to read "menangis". Whilst the 4th defendant had never used the word "melalak" in the relevant segment of the "Melodi" programme, the fact that the plaintiff had amended his pleadings to denote that the word used was "menangis" and not "melalak" ought to have indicated to the plaintiff that he ought not to have pursued with his arguments that the 4th defendant had contended that he was hysterical on knowing of the marriage of Ziana Zain to another. Numerous press statements had been attributed to the plaintiff (see documents in the common agreed bundle of

documents - CABD) wherein he had said he was humiliated because it was said by the defendants that he was hysterical. To my mind the plaintiff is the author of his own misfortune. The plaintiff read too much into a simple light entertainment. The basis for the light entertainment was the existence of the gossip and rumour (not denied by the plaintiff and his witnesses) that there was a romantic liaison between the plaintiff and Ziana Zain.

Having viewed the impugned segment of "Melodi" I find that the character called Ah Pek was crying when he was approached by the 4th defendant. That was the reason why the 4th defendant asked Ah Pek with the pertinent two questions:

(i) "Ni kenapa menangis?"; and

(ii) "Kenapa menangis-nangis Ziana Zain kahwin?"

At this stage it is relevant to point out that the 4th defendant's ability to ad lib was accepted as a fact. Having heard the evidence of the 4th defendant and having watched her demeanour and deportment, I find that when she followed, after asking the above two questions (which were in the script), with:

> Kau ni pun jadi macam Azwan Ali-lah … Ziana Zain kawin kau orang menangis! Kenapa aku kawin kau orang tak nangis?!

that the above statement was ad libbed by the 4th defendant in jest, suggestive of the light entertainment provided by the programme "Melodi", which poked fun at the local artistes. The word "kau orang" was meant to embrace many admirers of Ziana Zain including the plaintiff who on his own admission was an admirer of Ziana Zain. The word "kau orang" connotes a simplified meaning. It means, you all, namely, "you men in general! Ziana Zain marries and you men cry!! like Azwan Ali1!! …" To my mind if this statement can be construed as being defamatory, then men and women in the public eye who display their life-style and personalities to public scrutiny will be lining up before this court with suits in defamation notwithstanding the fact that as public personalities they ought to accept the fact that their lives are no longer to be confined within the cloistered walls of their own hermitage. As public personalities they must accept the "buffets and blows" that come with fame. The critical comments that they face must be accepted with equal composure, as the accolades that they love so much to hear. In *Warren v. Green* [1958] DLR 255 Cairns J referred to the speech of Egbert J in *Willows v. Williams* [1951] 2 WWR (NS) 657 at 659 wherein his Lordship said:

> Words which are on their face obviously defamatory may not be so because of the circumstances under which they are published. For example, they may be **spoken in jest, and so understood by any one who hears them**. (emphasis added)

It is pertinent to refer to the words of Solomon J in *Glass v. Perl* [1929] TPD 264:

> When words which on the face of them are defamatory, are spoken in obvious jest, the person uttering them is not liable.

It is my judgment therefore that since the programme "Melodi" in itself is a light entertainment programme as admitted by the plaintiff's own witness, then the said words as are alleged to be defamatory as uttered by the 4th defendant, are to my mind, words spoken in jest and therefore, not defamatory of the plaintiff. As said by the Court of Appeal in *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461 at 466:

> It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published.

As I said in *Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors* [1999] 3 MLJ 529:

> … the test to be applied when considering whether a statement is defamatory of a plaintiff is an objective one in that it must be given a meaning in which a reasonable man would understand it and that for this purpose it is necessary to consider the whole article.

It is my judgment that the whole statement is not defamatory when looked upon in its natural and ordinary meaning. The statements also do not carry any secondary meaning or innuendo because the whole statement is not derogatory and is not an attack upon the moral character of the plaintiff, nor does it attack the plaintiff in his professional capacity as an artiste. In fact the plaintiff testified that he is presently involved in the production of a programme called "Chit Chat Azwan" which was voted as the 3rd Best Asian Programme. This to my mind is a clear indication that the plaintiff's name and credibility as an artiste has never been tarnished nor tainted by the statements made by the 4th defendant in the programme "Melodi". It therefore does not behove the plaintiff to contend that he is shunned or avoided by the public or is exposed to hatred, ridicule or contempt since the plaintiff is still accepted by the viewers and the public as an accredited artiste.

In the documents contained in the CABD, which were admitted without dispute as to their authenticity and contents, the defendants exhibited an article which reads "Azwan Ali Pinang Ziana RM60 Ribu?" This meant that the plaintiff was prepared to offer as dowry a sum of RM60,000 to Ziana to propose marriage to her. The plaintiff not only did not deny this but admitted this document into the CABD without dispute. This clearly puts paid to the

plaintiff's cry of innocence and denial of any amorous feelings towards Ziana Zain. To my mind the defence of fair comment raised by the 4th defendant is well and truly taken. The plaintiff is attributed to have said in 1 CABD 2 as follows:

> Lepas ini, kalau aku ada duit, aku nak pinang Ziana terus.

This suggestion that if he had the money he would propose to Ziana and not denied by the plaintiff, as having been made by him, clearly suggests that the plaintiff, being a celebrity in his own way, had invited public comment, on the words attributed to the 4th defendant. When the plaintiff, and being in the public eye, makes such a public announcement of his intention to propose marriage to someone, surely he must accept the fact that when the object of his desire had turned him down by marrying another, he must be ready to accept public comment either in the press or on TV. Any matter brought before the public so as to invite public criticism on it may be commented upon (per Barry JP in *Payne v. Sheffield* [1882] 2 EDC 166). In this case the plaintiff clearly invited public comment by his own admitted desire to propose to Ziana Zain. I have no hesitation in holding that the plaintiff has failed to prove his case against the 4th defendant. Since the sub-stratum of the case falls with the dismissal of the case against the 4th defendant with costs, it is my judgment that the case therefore also stands dismissed against all other defendants with costs.

Since I have found that the statements were not defamatory, there is no necessity for me to consider the question of an apology and its effectiveness.